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10 *Generac Power Systems, Inc. and*
11 *Generac Holdings Inc.*

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KATHRYN LOCATELL, as an individual and
on behalf of all others similarly situated,

Plaintiff,

v.

GENERAC POWER SYSTEMS, INC. and
GENERAC HOLDINGS, INC.,

Defendants.

CASE NO. 2:23-cv-00203-TLN-JDP

**JOINT STIPULATION AND ORDER
STAYING CASE PENDING JUDICIAL
PANEL ON MULTIDISTRICT
LITIGATION RESOLUTION OF
MOTION TO TRANSFER**

1 Plaintiff Kathryn Locatell (“Plaintiff”) and Defendants Generac Power Systems, Inc.
2 (“Generac”) and Generac Holdings Inc. (“Generac Holdings,” with Generac Power Systems,
3 Inc., “Defendants”) (collectively, the “Parties”) by and through their respective counsel, hereby
4 stipulate and agree pursuant to Local Rule 143 as follows:

5 WHEREAS, Plaintiff filed an Amended Complaint (Dkt. 8) on March 13, 2023;

6 WHEREAS, Defendants’ counsel has agreed to receive service of the Amended
7 Complaint as of March 13, 2023, without waiving any defenses, including challenges to personal
8 jurisdiction or venue;

9 WHEREAS, on March 3, 2023, the named plaintiff in *Moon v. Generac Power Systems,*
10 *Inc., et al.*, Case No. 3:22-cv-09183-CRB (N.D. Cal.) filed a “Motion of Plaintiff for Transfer of
11 Actions to the Northern District of California Pursuant to 28 U.S.C. § 1407 for Coordinated or
12 Consolidated Pretrial Proceedings” (“JPML Motion,” attached hereto as Exhibit A) with the
13 Judicial Panel on Multidistrict Litigation;

14 WHEREAS, the JPML has assigned MDL No. 3078 and set a deadline to file responses
15 to the JPML Motion by March 28, 2023 and a reply by April 4, 2023 (MDL No. 3078, Dkt. 4);

16 WHEREAS, the JPML Motion seeks to transfer five actions (the “Putative Class
17 Actions”), including the above-referenced matter, for consolidation or coordination (Ex. A at
18 PDF p. 22-23);

19 WHEREAS, the Putative Class Actions all assert claims related to alleged defects in the
20 SnapRS component of Generac’s PWRcell system on behalf of a putative nationwide class;

21 WHEREAS, the Moon action and the instant action are both brought on behalf of a
22 California plaintiff asserting breach of express and implied warranty, breach of express and
23 implied warranty under the Song-Beverly Act, violation of the Unfair Competition Law, and
24 violation of the California Consumers Legal Remedies Act;

25 WHEREAS, counsel for Defendants has conferred with counsel for the named plaintiffs
26 in each of the Putative Class Actions and understands that the named plaintiffs and Defendants
27 all support or do not oppose the centralization of the actions in a multidistrict litigation;
28

1 WHEREAS, Defendants also understand that named plaintiffs in each of the Putative
2 Class Actions and Defendants all support or do not oppose staying the Putative Class Actions
3 pending the resolution of the JPML Motion;

4 WHEREAS, this Court has the authority to stay this action pending the decision of the
5 JPML (*Huitt v. Teva Pharms. USA, Inc.*, 2020 WL 8483907, at *1 (E.D. Cal. Dec. 15, 2020)
6 (explaining district courts consider 1) potential prejudice to the non-moving party; 2) hardship
7 and inequity to the moving party if the action is not stayed; and 3) the judicial resources that
8 would be saved by avoiding duplicative litigation if the cases are in fact consolidated) (citations
9 omitted));

10 WHEREAS, courts routinely stay actions pending the resolution of a JPML decision on a
11 motion to transfer (*e.g.*, *Rubio v. Arndal*, 2013 WL 796669, at *5 (E.D. Cal. Mar. 4, 2013));

12 WHEREAS, Defendants have not yet responded to the Amended Complaint and
13 discovery has not yet begun;

14 WHEREAS, in light of the possibility that this action may not proceed in this Court, the
15 Parties agree that briefing a motion to dismiss, or conducting other motion practice or discovery,
16 in the instant action would require expenditure of party and judicial resources that would be
17 duplicative and/or unnecessary if the JPML Motion is granted, and would create a risk of
18 inconsistent adjudication of similar issues;

19 WHEREAS, the Parties anticipate that the JPML will schedule the JPML Motion for its
20 May 25, 2023 Hearing Session and will rule on the motion shortly thereafter;

21 THEREFORE, IT IS HEREBY STIPULATED by the parties that:

22 (1) the instant action be STAYED pending the JPML's resolution of the JPML Motion;

23 (2) the Parties shall promptly notify the Court if the JPML Motion is denied and shall
24 submit a proposed order regarding the stay within three court days;

25 (3) should the JPML Motion be denied, Defendants shall have 45 days from the date of
26 the denial to respond to the Complaint, including but not limited to filing motions under Federal
27 Rule of Civil Procedure 12(b)(2) and 12(b)(6);
28

1 (4) should the JPML Motion be denied, the Parties shall have 60 days from the date of the
2 denial to confer as required by Federal Rule of Civil Procedure 26(f);

3 (5) in appearing in this action and filing this stipulation, and in filing required disclosures,
4 Defendants do not waive (and should not be construed to waive) any defenses, including a
5 challenge to personal jurisdiction.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 Date: March 14, 2023

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21 (as authorized on March 14, 2023)

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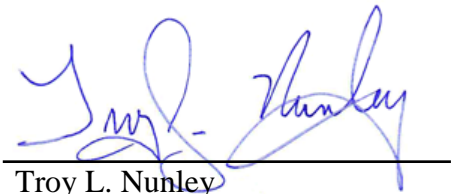
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Attorneys for Plaintiff Kathryn Locatell

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 15, 2023


Troy L. Nunley
United States District Judge